IN THE HIGH COURT OF BOMBAY AT GOA
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LETTERS PATENT APPEAL NO. 1 OF 2003

Shri Narayan P. S.
Kuncolienkar, major
of age, r/o Mardol,
Ponda, Goa. ... Petitioner.

Versus

1. The Goa Urban
Co-operative Bank Ltd.,
a co-operative Bank
registered under the
Maharashtra Co-operative
Societies Act, 1960, as
applied to the State of
Goa, having its Registered
Office near Church Square,
Dr. Atmaram Borkar Road,
Panaji, Goa,

2. The Hon'ble Presiding
Officer, Industrial
Tribunal, Government
of Goa, Junta House,
Second Floor, Panaji,
Goa, and

3. State of Goa,
represented through its
Chief Secretary, having
his office at Secretariat,
Panaji, Goa. ... Respondents.

Shri A. V. Nigalye, advocate for the appellant.

Shri Girish Sardessai, advocate for the respondent no.1.

Shri N. K. Sawaikar, Additional Government Advocate for respondent no.3.

CORAM : A. P. SHAH &
V. G. PALSHIKAR, JJ.

DATE : 20th February, 2004.

ORAL ORDER (Per A. P. Shah, J.)

Heard Shri Nigalye, learned counsel for the appellant, Shri Girish Sardessai, for respondent no.1 and Shri Sawaikar, Additional Government Advocate for respondent

no.3.

2. In the instant case the findings on the preliminary issue were given by the Industrial Tribunal on 6th January, 1999. It was held by the Tribunal that the domestic enquiry held against the workman was not fair and proper and, consequently, the enquiry was set aside. Thereafter, an additional issue was framed on 21st January, 1999, to the effect whether the employer proves that the workman is guilty of the charge of misconduct. This issue was framed because the employer had amended the written statement after the amendment was allowed vide Order dated 9th November, 1998. By way of amendment to the pleading, the employer had prayed that they must be permitted to lead evidence in support of the charges in the event the enquiry is set aside on any ground. Therefore, after the enquiry was set aside, the employer examined their witnesses in support of the charge. However, when the examination-in-chief of the witnesses was partly recorded, the workman filed an application, Exh. 17, praying that the employer should not be allowed to lead evidence and that an award should straightaway be passed ordering reinstatement of the workman. The objection to leading of evidence by the employer to prove misconduct before the Tribunal was that the request for permission to lead evidence in case the enquiry was set aside ought to have been made by the employer at the time when the written statement was filed.

The contention of the workman was that such a request cannot be made subsequent to the filing of the written statement. In the present case, the request was not made when the written statement was originally filed on 16th December, 1996. The request was made subsequently in November, 1998 by amending the written statement and, therefore, the employer should not be allowed to lead evidence to prove the charges. The Industrial Tribunal rejected the application vide Order dated 30th July, 2002. The Writ Petition filed challenging the said Order was dismissed by the learned Single Judge. Hence this Letters Patent Appeal.

3. Shri Nigalye appearing for the workman/employee urged that in the claim statement filed on 3rd October, 1996, the workman had pleaded that the enquiry held was not proper. The employer filed written statement on 16th December, 1996, but did not plead that they would be leading evidence in case the enquiry was set aside and the plea was taken by the employer by amending the written statement only in November, 1998. According to Shri Nigalye, the employer had sought permission about two years after the filing of the written statement and, therefore, the employer cannot be allowed to lead evidence in support of the charges. He placed strong reliance on the decision of a three Judge Bench of the Supreme Court in the case of **Shambhu Nath Goyal vs. Bank of Baroda & Ors.,** 1983 Lab.I.C. 1697, and also the decision of the Constitution Bench of the

Supreme Court in **Karnataka State Road Transport Corpn. vs. Lakshmidevamma (Smt.) & Anr.,** (2001)5 SCC 433.

4. In **Shambhu Nath Goyal vs. Bank of Baroda & Ors.,** (supra), Varadarajan, J., speaking for himself and on behalf of Chinnappa Reddy, J., held that the employer must make a request for an opportunity to lead evidence in the written statement itself. If he does not choose to do so at that stage, he cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the moral of the workman and compel him to surrender, which he may not otherwise do.

5. In view of the conflicting decisions in **Shambhu Nath Goyal's** case and **Rajendra Jha vs. Presiding Officer, Labour Court,** 1984 Supp SCC 520, the matter was referred to the Constitution Bench. In that case, the law laid down in **Shambhu Nath Goyal's** case (supra) was approved by the Constitution Bench. Santosh Hegde, J. speaking for himself and on behalf of Bharucha, J. (as His Lordship then was) observed thus:-

> 16. While considering the decision in **Shambhu Nath Goyal case** we should bear in mind that the judgment of Varadarajan, J. therein does not refer to the case of **Cooper Engg.** However, the concurring judgment of D. A. Desai, J. specifically considers this case. By the judgment in **Goyal case** the management was given the right to adduce evidence to justify its domestic enquiry only if it had

reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the management had to excise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in **Shambhu Nath Goyal** case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is like to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in **Shambhu Nath Goyal case** is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in **Shambhu Nath Goyal case.** It is to be noted that this judgment was delivered on 27-9-1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure of exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see that a long-standing decision is not unsettled without a strong cause."

6. In the concurring Judgment, Shivraj V. Patil, J. added as follows:-

"44. The question as to at what stage the management should seek leave of the Labour Court/Tribunal to lead evidence/additional evidence justifying its action is considered in the draft judgment of Hegde, J. and not the power of the court/tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of the case. As per Section 11(1) of the Industrial Disputes Act, 1947 (for short "the Act") a court/tribunal can follow the procedure which it thinks fit in the circumstances of the case subject to the provisions of the Act and the rules framed thereunder and in accordance with the principles of natural justice. Under Section 11(3), the Labour Court/Tribunal and other authorities mentioned therein have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit in respect of certain matters which include enforcing the attendance of any person and examining him on oath and compelling the production of documents and material objects.

45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contention. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice." (Emphasis supplied)

7. It is thus clearly seen that there is no absolute bar to permit leading of evidence. The Supreme

Court observed that depending on the facts and circumstances of the case and if it is just and necessary in the interests of justice the management has power to lead evidence in appropriate cases. In this regard, it would be useful to refer to the observations of D. A. Desai J., in his concurring judgment in **Shambhu Nath Goyal's** case (supra), which read as follows:-

> "The statement that if an application is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims relief, it must plead for the same. The pleading can be incorporated in a statement of claim or a written statement of defence. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleading has to be granted. If a separate application is made, it would be open to the labour Court/Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action? Without being specific, it can be said that such an application has to be examined as it is an application for amendment of original pleadings keeping in view all the aforementioned considerations and if it does not appear to be bona fide or has been made after a long unexplained delay or the explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same. The observation was not made to law down a proposition of law that as and when it suits the convenience of the employer at any stage of the proceedings, it may make an application seeking such opportunity and the Labour Court/Industrial Tribunal was obliged to grant the same."

8. In the light of the above observations of the Supreme Court it is difficult to accept the contention of Shri Nigalye that the Court acted without jurisdiction in permitting the employer to lead evidence. It is true that the amendment application was moved by the employer after two years. However, the application was not objected to by the workman and the amendment was allowed by Order dated 3rd November, 1998. The enquiry was set aside by the finding dated 6th January, 1999. Thus permission was sought by the employer much before the setting aside of the enquiry. Thereafter, additional issue was framed on 21st January, 1999 as to whether the employer proved the charges of misconduct. The workman did not object to the framing of the additional issue. The evidence of the employer was also partly recorded and it is at this belated stage that the workman objected to the leading of evidence. Considering the above facts we feel that no prejudice was caused to the workman in any manner and no fault can be found with the impugned Order of the Tribunal.

9. In the result, the Letters Patent Appeal is dismissed.

A. P. SHAH, J.

V. G. PALSHIKAR, J.

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